

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT  
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE  
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.**

FILED BY CLERK

MAY -8 2008

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

JODI A.,	)	
	)	
Appellant,	)	2 CA-JV 2007-0089
	)	DEPARTMENT B
	)	
v.	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
ARIZONA DEPARTMENT OF	)	Rule 28, Rules of Civil
ECONOMIC SECURITY,	)	Appellate Procedure
DEAN W., and JADE W.,	)	
	)	
Appellees.	)	
	)	

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APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 13680400

Honorable Elizabeth Peasley-Fimbres, Judge

AFFIRMED

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Nuccio & Shirly  
By Salvatore Nuccio

Tucson  
Attorneys for Appellant

Terry Goddard, Arizona Attorney General  
By Pennie J. Wamboldt

Tucson  
Attorneys for Appellee Arizona  
Department of Economic Security

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V Á S Q U E Z, Judge.

¶1 Following a contested severance hearing, the juvenile court terminated appellant Jodi A.'s parental rights to her children, Dean W., born in July 1999, and Jade W., born in December 2003.<sup>1</sup> The court found that a statutory ground existed for severance pursuant to A.R.S. § 8-533(B)(3) (mental illness or history of chronic substance abuse) and that severance was in the children's best interests. Jodi does not contest that she has a history of chronic substance abuse; rather, she challenges the court's finding that her condition will continue for a prolonged and indeterminate period. For the reasons set forth below, we affirm.

¶2 A juvenile court may terminate a parent's rights if it finds by clear and convincing evidence that any statutory ground for severance exists and if it finds by a preponderance of the evidence that severance is in the child's best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). On review, "we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶3 We view the evidence in the light most favorable to upholding the juvenile court's ruling. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d 682,

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<sup>1</sup>The father, whose parental rights to the children were also terminated, is not a party to this appeal.

686 (2000). In July 2005, Child Protective Services (CPS) took physical custody of the children and filed a dependency petition because there was no one to care for them after Jodi was arrested; the father's whereabouts were unknown, and there was an outstanding warrant for his arrest. CPS had received reports that marijuana, methamphetamine, and drug paraphernalia were accessible to the children in the family home; the home had "dog feces . . . rotting food, dirty dishes, cockroaches, and garbage that was piled at least a foot high"; and there was a history of domestic violence between the parents. The Arizona Department of Economic Security (ADES) filed an amended dependency petition, the allegations of which Jodi admitted, and the children were adjudicated dependent as to her in October 2005.

¶4 The initial case plan goal was family reunification. ADES provided Jodi various services, including random drug testing; substance abuse, anger management, and psychological evaluations; and parenting classes and parent-aide services. Psychologist Jill Plevell conducted a psychological evaluation of Jodi, then thirty-eight-years old, in October 2005. Jodi acknowledged to Dr. Plevell that she had started using various substances as early as the age of fifteen, including alcohol ("to intoxication most days"), marijuana, cocaine, methamphetamine, mushrooms, and LSD.

¶5 Although the children were returned to Jodi in October 2005, they were again removed in August 2006 after Jodi tested positive for methamphetamine on two occasions and was placed on probation after being convicted of solicitation to possess

methamphetamine for sale. Jodi was incarcerated from December 2006 to May 2007. At a March 2007 permanency planning hearing, the court noted that “[t]he children [had been] removed from the mother, returned, and removed again” and that Jodi had not been able to maintain sobriety for an extended period of time. The court changed the case plan to severance and adoption, and ADES filed a motion to terminate Jodi’s parental rights pursuant to § 8-533(B)(3) (chronic substance abuse) and § 8-533(B)(8)(a) (nine-month, court-ordered, out-of-home placement).<sup>2</sup> Following a four-day contested severance hearing, the court severed Jodi’s parental rights based on chronic substance abuse in November 2007, and this appeal followed.

¶6 Section 8-533(B)(3) provides that a parent’s rights may be terminated if the petitioner establishes by clear and convincing evidence “[t]hat the parent is unable to discharge the parental responsibilities because of mental illness, mental deficiency or a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period.” On appeal, Jodi contends that the juvenile court erred by finding her substance abuse would continue for a prolonged, indeterminate period, arguing she was only seven months short of the ten-month, substance-free goal Dr. Plevell had set for her to regain custody of the children; she insists seven months does not constitute a prolonged period, particularly in the absence of a statutory definition of this phrase. *See In re Maricopa*

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<sup>2</sup>The juvenile court ultimately found evidence insufficient as to the latter ground.

*County Juv. Action Nos. JS-5209 and JS-4963*, 143 Ariz. 178, 184, 692 P.2d 1027, 1033 (App. 1984) (referring to “prolonged indeterminate period” in context of mental illness as “an extended and indefinite period of time”).

¶7 Notably, Dr. Plevell’s comment that Jodi should maintain sobriety for “at least ten months” before regaining custody of the children was but one comment in the context of her lengthy testimony in which she concluded that Jodi’s condition would likely continue for a prolonged time. Plevell testified that, although Jodi had acknowledged a history of alcoholism and illegal drug use spanning more than twenty years, she nonetheless denied any family problems related to her substance abuse, despite the fact that her children had been removed from her custody for that very reason. Similarly, the juvenile court later noted in its termination order that Jodi had “struggled to express the ways that her use of illegal substances affected her children. Generally, it appears that she is using recovery lingo without internalizing what is necessary for long term recovery.” Plevell also testified that, if Jodi had told her at the October 2005 evaluation that she had been arrested just a few weeks earlier for possession of methamphetamine, that “would have been really critical information in doing [her] evaluation.” She explained that, had she known about the arrest, combined with Jodi’s positive drug tests in July and December 2006, she would have concluded Jodi had “definitely had a very bad relapse,” and she would have required her to maintain sobriety for at least ten months outside of incarceration before the children could be returned to her. Plevell ultimately opined that Jodi’s recent positive drug tests indicated

she suffered from a chronic “poly-substance dependence,” and based on her “continued marijuana use and continued methamphetamine use and . . . her history of alcoholism,” her condition is “likely to continue for a prolonged, indeterminate period of time.”

¶8 In addition, Jodi’s probation officer reported that her actions did not “reflect[] those of an individual who has been committed to behavior change and living a lifestyle devoid of drugs.” Notably, Jodi had provided only two of at least twelve of the required drug samples for testing between August 2006, when the children were removed from her custody, until she was incarcerated in December 2006, both of which were positive. Accordingly, Jodi’s having maintained sobriety for three months before trial, when viewed in the context of having spent more than half of her lifetime immersed in substance abuse, was not sufficient to overcome the juvenile court’s finding that, “[g]iven [Jodi’s] history of relapse and mental illness, there is a significant risk that she may relapse in the future.”

¶9 Jodi also contends Dr. Plevell improperly opined that “the best interests of the children should be balanced when determining what the likelihood of [Jodi’s] continued sobriety was.” She seems to argue that Plevell improperly considered the children’s best interests in forming her opinion that Jodi’s condition was likely to continue. In reviewing the context in which Plevell made this comment, it is clear she was concerned whether Jodi could “maintain stability in her sobriety” and, assuming she could, whether the children could wait long enough for that to happen. Although Plevell may have discussed these two ideas at once, the juvenile court’s detailed ruling demonstrates the court understood the

difference between these two concepts. Moreover, it is also clear the court did not base its ruling solely on the best interests of the children. *See Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, ¶ 43, 971 P.3d 1046, 1055 (App. 1999) (law does not permit severance based solely on best interests of child).

¶10 Jodi additionally challenges the juvenile court's finding that her condition would continue for a prolonged indeterminate time. She directs us to several facts in the record suggesting she had been making progress. But, the court also heard her substance abuse counselor's testimony that Jodi had provided numerous false urine samples and had later admitted to the counselor that she had actually been using methamphetamine daily while participating in her treatment program. It was for the juvenile court to weigh the evidence and assess the credibility of witnesses. *See Jesus M.*, 203 Ariz. 278, ¶ 12, 53 P.3d at 207. To the extent there may have been conflicts in the evidence, it was for that court to resolve them. *Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, ¶ 16, 107 P.3d 923, 928 (App. 2005).

¶11 The record is replete with examples of undisputed instances showing Jodi's inability to acknowledge the severity of her substance abuse, a condition spanning approximately twenty years despite repeated but failed attempts at treatment. In its order, the juvenile court expressed concern that Jodi "still exhibits some of the behaviors of substance abusers . . . [and her] decision making continues to be unhealthy." Despite Jodi's accurate contention § 8-533 does not define a "prolonged indeterminate period," we

conclude, based on any definition of that phrase, the court was well within its discretion in finding reasonable grounds to believe Jodi's substance abuse will continue well into the future.

¶12 The juvenile court's order severing Jodi's parental rights to Dean and Jade is affirmed.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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PHILIP G. ESPINOSA, Judge